

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAIME DIAZ-HERRERA,

Defendant-Appellant.

UNPUBLISHED

June 30, 2009

No. 285347

Wayne Circuit Court

LC No. 07-021436-FH

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Following a bench trial, defendant appeals as of right his conviction of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1).¹ We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court’s findings were insufficient and clearly erroneous. We disagree. In reviewing findings of fact in a bench trial, we review the trial court’s factual findings for clear error and its conclusions of law de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). A judge need not provide a particularized or detailed elaboration of the facts; rather, a judge’s findings are sufficient as long as it is obvious that the judge was aware of the legal and factual issues and correctly applied the law. MCR 2.517(A)(2); *Lanzo Constr, supra* at 479; *People v Lewis*, 168 Mich App 255, 268-269; 423 NW2d 637 (1988).

The reserve officer testified that he was acting as a crossing guard at an elementary school on October 11, 2007, and that he had previous contact with defendant. When school let out that day, the officer noticed that defendant was blocking traffic as he sat in his truck waiting for his son, and he ordered defendant to move along. Defendant refused and became irate. When the officer asked defendant for his license in an attempt to ticket him for blocking traffic, defendant sped his truck to the curb and attempted to flee on foot. Defendant then returned to the truck and attempted to strike the officer. A struggle ensued and defendant tried to remove the officer’s gun from its holster.

¹ Defendant was acquitted of attempting to disarm a police officer.

Defendant offered his own version of events. He testified that he was picking up his son from school when the officer approached him. Because defendant believed that the officer had a personal vendetta against him, defendant advised his son to get out of the truck and find the principal, hoping that the principal would intervene on his behalf. Defendant was removing his license from his wallet when his dog jumped out the open truck door. Fearing that the dog would be hit by a car, defendant pulled his truck to the curb, exited the passenger's side door and retrieved the dog. When defendant closed the door, he was confronted with the irate officer, who immediately became physical with him. Defendant did not feel that the officer's actions were justified. Defendant denied attempting to assault the officer and also denied touching the gun.

At the close of proofs, the trial court concluded that defendant was not guilty of attempting to disarm the officer, but that he was guilty of resisting or obstructing the officer in the performance of his duties. Defense counsel then asked the court for further findings, stating, "I don't know that I got a full factual finding as to the assault." The trial court indicated:

I didn't find him guilt of assaulting. I found him guilty of resisting and opposing and obstructing the officer in the line of duty in that the officer was merely asking Mr. Diaz-Herrera to move along so that the traffic could keep moving and for whatever reason, Mr. Diaz—and I think the reason is because he just doesn't like Officer Rojas.

All of the evidence strongly suggests that. Mr. Diaz-Herrera decided that he wanted to challenge the officer as to his authority when the authority is clearly visible. He has his badge. He's got a fully marked scout car. So his authority was there and nobody has shown anything to say that the authority was not there. And he was acting in the line of duty by trying to keep the traffic moving and to protect the children and all of the other citizens around there.

* * *

Officer Rojas, a Police Officer, that the Defendant knew or had reason to know was performing his duties and I think it was clear that he was performing his duties because he was there as a traffic, basically, enforcer. He was trying to keep the traffic going and enforcing the laws in that regard and Mr. Rojas opposed him and resisted that.

These findings are sufficient and support the trial court's ultimate application of the law. The essential elements of resisting and obstructing a police officer are (1) that defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered the officer, and (2) that defendant knew or had reason to know that the officer was performing his duties. MCL 750.81d(1). "Obstruct" is defined "to include the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a) (emphasis added). A defendant knows or has reason to know that he is resisting and obstructing a police officer in the performance of his duties when he ignores or resists the persistent commands of a police officer in full uniform. See *People v Nichols*, 262 Mich App 408, 413-414; 686 NW2d 502 (2004). The offense of resisting and obstructing a police officer does not require that an officer be effectuating a lawful arrest, but only that the defendant knew or should have known

that the officer was performing his duties. *People v Ventura*, 262 Mich App 370, 377; 686 NW2d 748 (2004).

When the officer approached defendant, he was in full uniform and a fully marked police vehicle was in the vicinity. The officer asked defendant to move along and then asked him for his license. Defendant did not move his vehicle. Instead, he sought intervention from the principal by telling his son to go and find him. When asked for his license, defendant moved the truck to the curb and exited the passenger's side door. Even if defendant did so because he was retrieving the dog, the officer did not see a dog and may have perceived defendant's actions as an attempt to flee. Defendant ignored a number of commands, and then admittedly offered physical resistance when the officer tried to subdue him. Defendant admitted that he recognized that the officer was a police officer when he was stopped. Therefore, the prosecution offered sufficient evidence for a rational trier of fact to conclude that the essential elements of the crime were proven beyond a reasonable doubt.

Even though defendant submitted contradictory evidence, it was for the trier of fact to determine the credibility of the proofs presented. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998); *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). Regardless which individual started the physical portion of events, defendant admitted that he resisted the officer and did not feel that the officer was justified in his actions. Defendant even testified that when he called over to the principal for help, the principal advised him to just do what the officer told him. Defendant makes much of the fact that the evidence fails to support a finding that he assaulted the officer. However, an assault is not a necessary element of the charged offense. It was clear from the evidence that defendant knew the officer was an officer acting within his authority and that defendant resisted or obstructed the officer from performing his duties by knowingly failing to comply with the officer's commands.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio